

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs February 3, 2009

STATE OF TENNESSEE v. JONATHAN DEWAYNE JOHNSON

Appeal from the Circuit Court for Coffee County
No. 34,725F John W. Rollins, Judge

No. M2008-00811-CCA-R8-CO - Filed April 23, 2009

The defendant, Jonathan Johnson, appeals the decision of the Coffee County Circuit Court revoking his probation. As part of a plea agreement, the defendant pled guilty to one count of possession of Schedule II cocaine with intent to sell or deliver, a Class C felony, and one count of evading arrest, a Class D felony. The trial court imposed a four-year sentence for the drug conviction, with one year to be served in the county jail followed by three years of probation. For the evading arrest conviction, the defendant received a two-year sentence to be served in the Department of Correction. A probation violation report was filed against the defendant, alleging multiple violations of the terms and conditions of his probation. Following a revocation hearing, the trial court revoked the defendant's sentence and ordered that he serve his four-year sentence. On appeal, the defendant asserts that the trial court erred in revoking his probation. Following review of the record, we find no error and affirm the revocation.

Tenn. R. App. 8; Judgment of the Circuit Court Affirmed

JOHN EVERETT WILLIAMS, J., delivered the opinion of the court, in which J.C. McLIN and CAMILLE R. McMULLEN, JJ., joined.

Bethel Campbell Smoot, Jr., District Public Defender, and Jesse Stockwell, Assistant Public Defender, for the appellant, Jonathan Dewayne Johnson.

Robert E. Cooper, Jr., Attorney General and Reporter; Lacy Wilber, Assistant Attorney General; Charles M. Layne, District Attorney General; and Kenneth J. Shelton, Jr., Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

Procedural History

A Coffee County grand jury returned a four-count indictment against the defendant, charging him with: (1) possession of cocaine with intent to sell or deliver; (2) being a felon in possession of

a firearm; (3) felony evading arrest; and (4) possession of a Schedule IV controlled substance. Pursuant to a plea agreement, the defendant pled guilty to possession of cocaine with intent to sell or deliver and felony evading arrest, with the remaining charges being dismissed. The trial court subsequently sentenced the defendant, as a Range I, standard offender, to concurrent sentences of four years for the drug conviction, of which one year was to be served in the county jail and the balance on probation, and two years for the evading arrest conviction.

Later, a probation violation report was filed against the defendant, asserting multiple violations of the terms and conditions of his probation, including: (1) being charged with a new criminal offense, namely domestic violence; (2) failure to report to his probation officer; (3) failure to pay fees and costs; and (4) engaging in assaultive, abusive, threatening, or intimidating behavior. A second violation report was filed alleging further failures to report and failure to inform his probation officer of his current residence. A revocation hearing was subsequently held at which Joseph Darnell, the defendant's probation officer, and the defendant testified.

Mr. Darnell testified that he filed the probation violation warrant because the defendant had failed to report as ordered, missing appointments time and time again; failed to pay fines and costs; and engaged in assaultive and abusive behavior in a domestic violence case. He also noted that the defendant had been arrested and charged with domestic violence for those actions. Though not listed in the report, Mr. Darnell testified that the defendant had informed him that he also pled guilty to a criminal trespass charge while on probation. Finally, Mr. Darnell testified that he had learned on the morning of the hearing that the defendant had also been charged with driving on a revoked or suspended license and that the defendant had failed to report that new charge. Additionally, he learned that the defendant, who was currently incarcerated in the Coffee County Jail, had also failed a drug test on the morning of the hearing, testing positive for marijuana. He did note that the defendant had reported to some meetings and had passed a drug test on the one occasion that Mr. Darnell had him tested.

The defendant, against the advice of counsel, testified and stated that he had reported to some of the scheduled meetings and that he had passed multiple drug tests. He denied that he assaulted his girlfriend and stated that she had only reported that he had because they were in a disagreement. The defendant did acknowledge that he had failed a drug test on the morning of the hearing and admitted that he had smoked marijuana. When asked by the State where the drugs came from, he refused to answer. Even after the district attorney general explained to the defendant that he could be charged with possession of drugs in a penal institution and offered him immunity if he testified as to where the drugs came from, the defendant refused to answer the question.

After hearing the evidence presented, the trial court revoked the defendant's probation and ordered that the sentence be served. The defendant filed an untimely *pro se* notice of appeal. However, this court granted waiver for the untimely notice of appeal due to problems with the defendant's representation.

Analysis

On appeal, the defendant argues that the trial court erred in revoking his probation. A trial court may revoke probation and order imposition of the original sentence upon a finding by a preponderance of the evidence that the person has violated a condition of probation. T.C.A. § 40-35-310, -311 (2006); *State v. Shaffer*, 45 S.W.3d 553, 554 (Tenn. 2001). This court reviews a revocation of probation under an abuse of discretion standard. *State v. Stubblefield*, 953 S.W.2d 223, 226 (Tenn. Crim. App. 1997) (citing *State v. Harkins*, 811 S.W.2d 79, 82 (Tenn. 1991); *State v. Delp*, 614 S.W.2d 395, 398 (Tenn. Crim. App. 1980)). This means that the trial court will be affirmed unless the record contains no substantial evidence to support the conclusion of the trial court. *Harkins*, 811 S.W.2d at 82. If the trial court finds by a preponderance of the evidence that the defendant has violated a condition of probation, the court has the authority to revoke the probation and reinstate the judgment as originally entered. T.C.A. § 40-35-311(e). Discretion is abused only if the record contains no substantial evidence to support the trial court's conclusion that a violation has occurred. *Harkins*, 811 S.W.2d at 82.

The trial court stated on the record, "Based on or predicated on the testimony I have just heard, I don't have any choice other than to revoke in full." The order, which was subsequently filed, indicated that the trial court found that the defendant had violated his probation by failing to report, by acquiring new charges, and by using illegal substances in jail.

Other than a recitation of relevant revocation law, the defendant's entire argument is as follows:

The defendant contends that the court's decision was an arbitrary one and not a conscientious one, and he should have been allowed to remain on probation. The defendant contends that the revocation of his probation will not serve the ends of justice in the best interest of both the public and the defendant. *Barker vs. State*, 483 S.W.2d 586, 590 (Tenn. Crim. App. 1972).

The defendant does not appear to contest the trial court's finding with regard to the fact that multiple violations occurred. Indeed, on the evidence in the record, we agree that the trial court could reach no other conclusion. Mr. Darnell gave specific testimony that the defendant had failed to report, had acquired new charges, and had tested positive for marijuana on the morning of the hearing. The defendant testified that he had smoked marijuana while in the county jail. Any one of the rule violations, standing alone, is sufficient to support revocation; thus, the defendant, by admitting his use of illegal drugs, essentially conceded an adequate basis for finding that he violated the terms of his probation. As such, we cannot conclude that there is not substantial evidence in the record to support the trial court's conclusion. Upon finding that any violation occurred, the trial court was authorized to revoke the defendant's probation. See T.C.A. § 40-35-311(d). Thus, we find no abuse of discretion in the trial court's decision.

CONCLUSION

Based upon the foregoing, we affirm the revocation by the Coffee County Circuit Court.

JOHN EVERETT WILLIAMS, JUDGE